

**REMARKS**

This amendment is filed in response to the Office Action dated November 9, 2006. In view of this amendment, this application should be allowed and the case passed to issue.

No new matter is introduced by this amendment. The amendment to claim 1 is supported throughout the specification. Claim 1 is amended to clarify that the fuel cell stack (10) comprises at least one unit cell (132) having electrodes, and an anode and a cathode respectively connected to the electrodes of the unit cell, and that the current from the DC power supply (22, 23) is supplied to the unit cell of the fuel cell stack, while electricity generation thereof is terminated.

Claims 1 and 3-31 are pending in this application. Claims 1 and 3-6 are rejected. Claims 7-31 were withdrawn pursuant to a restriction requirement. Claim 1 is amended in this response. Claim 2 was previously canceled.

***Claim Rejections Under 35 U.S.C. §§ 102 and 103***

Claims 1, 4, and 5 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sugiura et al. (US Pat. Pub. No. 2002/0038732).

Claims 1, 3, and 5 were rejected under 35 U.S.C. § 102(e) as being anticipated by Hayashi et al. (US Pat. Pub. No. 2002/0146610).

Claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Sugiura et al. or Hayashi et al. This rejection is traversed, and reconsideration and withdrawal respectfully requested.

These rejections are traversed, and reconsideration and withdrawal thereof respectfully requested. The following is a comparison between the present invention, as claimed, and the cited prior art.

An aspect of this invention, per claim 1, is a fuel cell system which generates electricity by supplying fuel gas and oxidant gas to a fuel cell stack. The fuel cell system comprises a fuel cell stack comprising at least one unit cell having electrodes, and an anode and a cathode respectively connected to the electrodes of the unit cell and a DC power supply. The DC power supply comprises at least one of a generator and battery. An anode of the DC power supply is connected to the anode of the fuel cell stack, and a cathode of the DC power supply is connected to the cathode of the fuel cell stack. A controller is programmed to determine whether or not the fuel cell stack is generating electricity, and supply current to the unit cell of the fuel cell stack from the DC power supply when generation of electricity by the fuel cell stack is terminated.

The Examiner asserted that Sugiura et al. teach a motor vehicle comprising a fuel cell connected to a DC/DC converter connected to a rechargeable battery. The Examiner averred that Hayashi et al. teach a motor vehicle comprising a fuel cell and battery connected in parallel.

Sugiura et al. and Hayashi et al., whether taken in combination or alone, do not anticipate or suggest the claimed fuel cell system. Sugiura et al. and Hayashi et al. do not teach the current flow as claimed. Sugiura et al. and Hayashi et al. do not disclose a controller programmed to determine whether or not the fuel cell stack is generating electricity, and supply current to the unit cell of the fuel cell stack from the DC power supply when generation of electricity by the fuel cell stack is terminated, as required by claim 1.

Sugiura et al. teach that the battery (20) compensates for electric power to drive FC accessories (51) in the case where the fuel Cell (40) is unable to generate sufficient electric power due to insufficient warm-up of the fuel cell (40) (see para. [0056]). Hayashi et al. disclose that the when the operation of the fuel cell (1) is started, if it is detected that the temperature of the fuel cell (1) is equal to or below a predetermined temperature based on the detected result of

the temperature sensor (T), ECU (50) switches the electric heater on, so that the upper half of the fuel cell (1) is heated (see para. [0132]).

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the disclosure in a single reference of each element of a claimed invention. *Helifix Ltd. v. Blok-Lok Ltd.*, 208 F.3d 1339, 54 USPQ2d 1299 (Fed. Cir. 2000); *Electro Medical Systems S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 32 USPQ2d 1017 (Fed. Cir. 1994); *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 399, 36 USPQ2d 1101 (Fed. Cir. 1995); *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051 (Fed. Cir. 1987). Because Sugiura et al. and Hayashi et al. do not disclose a controller programmed to determine whether or not the fuel cell stack is generating electricity, and supply current to the unit cell of the fuel cell stack from the DC power supply when generation of electricity by the fuel cell stack is terminated, as required by claim 1, Sugiura et al. and Hayashi et al. do not anticipate claim 1.

Applicant further submits that Sugiura et al. and Hayashi et al. do not suggest the claimed fuel cell system.

The dependent claims are allowable for at least the same reasons as independent claim 1 and further distinguish the claimed fuel cell system.

### ***Restriction***

Upon the allowance of the elected claims, Applicant respectfully requests rejoinder, examination, and allowance of the withdrawn species, and rejoinder, examination and allowance of the withdrawn method claims in accordance with the rejoinder provisions of MPEP § 821.04(b).

**Application No.: 10/637,660**

In view of the above remarks, Applicants submit that this application should be allowed and the case passed to issue. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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